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CURRENT TOPICS

His Honour Judge Cave, K.C.

THE death of His Honour Judge EDWARD WATKINS CAVE, K.C., on 25th April, at his home at Blandford, Dorset, at the age of seventy-six, removes from amongst us a vigorous and forthright personality, before whom it was always a refreshing experience to appear. When he was appointed to the county court bench in 1937, workmen's compensation cases formed a great part of the work of the county courts, and, unlike the mythical judge who is said to have asked, on being confronted with his first workmen's compensation case, whether there was not an Act of Parliament on the subject, he was an expert. His father was Mr. Justice Cave, and he joined his father's circuit, the Midland, where his practice in workmen's compensation cases was large. After taking silk in 1921 his practice centred more on London, and he appeared in arbitrations and in local government and Parliamentary work. In 1928 he became a Bencher of the Inner Temple, which had called him to the Bar in 1897. In 1932 he was appointed Recorder of Birmingham. All will mourn the passing of an outstanding judge who was strong and courageous to do justice.

Sir Patrick Hastings, K.C.

THE news of Sir PATRICK HASTINGS' retirement will be received with general regret. His fame as an advocate extends beyond the immediate limits of the legal profession and he has recently won added laurels with a successful West End play. Sir Patrick was called to the Bar in 1904 and took silk in 1919. He was the member of Parliament for Wallsend from 1922 to 1926, and in 1924 he was Attorney-General and became a Bencher of Middle Temple. His position as an advocate was almost unique and certainly unsurpassed. The services of no one were in greater demand, especially in a cause where courage and outspokenness were needed. To those who were learning the art, he was both an inspiration and a model, and a discerning public flocked to hear him and admire his prowess. We trust that his health will soon be completely restored and that his retirement will be long and happy.

Common Employment and Alternative Remedies

THE second reading of the Law Reform (Personal Injuries) Bill, on 23rd April, brings nearer the day when the doctrine of common employment, with its corollary, the Employers' Liability Act, 1880, and its retinue of decided cases, will be swept away. No one will disagree with the ATTORNEY-GENERAL'S description of the doctrine as "notorious and ill-favoured." On the other hand, the law as to absolute civil and criminal liability for breach of statutory duty is to remain unaltered, because the Government have decided that it would be a retrograde step to introduce exceptions. The coming to an end of the workmen's compensation system and the substitution of national insurance benefits means a necessary alteration in the law as to election between workmen's compensation and the common-law remedy for negligence, and the Bill proposes that of the total sum awarded by the courts as damages in an action at common law the courts should take into account one-half of the insurance benefits that would be received or had been received by the injured person in a period of five years from the date of the accident. The Attorney-General stated in the House that the Government had adopted this as a compromise solution.

Solicitor's Change of Name

SOLICITORS are in a class by themselves so far as change of name is concerned. Unlike the ordinary citizen, who is no longer hampered by formalities under the Defence (General) Regulations, 1939, solicitors who, having changed their names, wish to practise in their new names must comply with certain regulations. The making of new regulations by the Master of the Rolls on this matter is announced in the April issue of the *Law Society's Gazette*. In future, it is stated, before a change of name is made on the roll, due notice of the proposed new name must be given in a legal journal and elsewhere, so that the Master of the Rolls may be satisfied that there is no possibility that the change will cause confusion with the name of another solicitor whose name is already on the roll. Copies of the new regulations may be obtained from The Law Society's offices.

Aliens as Company Directors

A HOME OFFICE statement on the subject of "aliens as company directors" has been made in response to a question raised by The Law Society, and appears in full in the April issue of the *Law Society's Gazette*. Generally, it is stated, aliens who were given leave to land in the United Kingdom before 3rd September, 1939, and have remained here since that date and are no longer subject to any restrictions on the length of their stay, employment or occupation, or are subject only to the condition that they may remain in the United Kingdom until a date to be specified by the Secretary of State, are free to become directors of companies without first obtaining the permission of the Secretary of State. Foreign husbands of British-born women, former British subjects who have acquired a foreign nationality while resident abroad,

and ex-members of H.M. Forces are classes of aliens with regard to whom a similar view is taken if they have entered the United Kingdom since 3rd September, 1939, and are subject only to the above condition. Other aliens must obtain the consent of the Secretary of State. This consent is not required for the appointment of an alien who is resident abroad to the directorship of a company operating in the United Kingdom, but such an appointment would not in itself give an alien any claim to be allowed to enter this country. Finally, the necessity for Home Office consent to an alien acting as director is not dispensed with by the fact that he is already in employment with a company with the permission of the Ministry of Labour.

Black Market in Petrol

To defeat the black market in petrol a new Bill, accepting, with some reservations, the recommendations of the Russell Vick Committee, has been introduced in the Commons. It is called the Motor Spirit (Regulation) Bill, and it penalises a garage proprietor who is convicted of having commercial petrol in a pump not marked " commercial " by disqualifying him from selling or being concerned with the sale of any petrol at those premises for twelve months. If he is convicted of supplying commercial petrol into a private motor vehicle there will be a similar disqualification from selling commercial petrol at those premises for the same period. If a garage proprietor is convicted of removing or disguising the distinctive ingredients from the " red " commercial petrol he will be disqualified from selling or being concerned with the sale of petrol at any premises for twelve months. In respect of any of these offences the courts may order that petrol stocks at a garage shall be forfeited to the Crown. Heavy penalties can also be imposed. Private motorists are to be similarly subject to disqualifications and heavy penalties for having commercial petrol in their tanks. When the Bill is passed it will rest mainly with the police to enforce the new law, and it is interesting to observe that the new Bill empowers them to enter premises to take samples of petrol.

Wig and Gown

A CORRESPONDENT has written to us, on the subject of wig and gown, that he has always understood—though he knows of no authority—that the reason for the judge's wig and gown was to separate the man from the office, and as far as possible ensure complete impersonality, which this garb does most effectively. He adds that there is perhaps not the same force in counsel being required to robe, but even in their case the traditions of the Bar exclude the expression by counsel of their personal opinion, and make them an instrument of justice. This seems to us to be as good a reason as any for the retention of wig and gown, although, like our correspondent, we know of no authority for saying that it had anything to do with their introduction. So far as we know, judges chose their present garb in the reign of Charles I, because previously it had varied according to the caprice of the reigning monarch with ill effect on their then slender emoluments. The reason given by our correspondent is pleasing, and may well have been considered so in the reign of Charles I, when the independence of the judges was becoming a serious question.

Solicitors and Courts Martial

SOLICITORS who are willing to undertake defences before courts martial in the United Kingdom are asked to communicate with the Secretary of The Law Society, giving particulars of their experience in advocacy and in court-martial work, and stating the number of cases they would be prepared to undertake in each year. The April issue of the *Law Society's Gazette* states that the War Office have asked the Council of The Law Society to prepare a list of solicitors who are willing to undertake this work, and it adds that solicitors will be asked to undertake cases only in their own locality. Remuneration, wherever possible, is to be by an inclusive fee agreed beforehand. Where the length and complexity of a case does not permit this, reasonable remuneration will be payable having regard to the time expended, and subject to review by the Officer-in-Charge, Military Department, Judge-Advocate-General's Office, whose decision is to be final. The R.A.F. will also make use of this list. It is added that the Council accepted only as a temporary measure the arrangement in B.A.O.R. whereby counsel appeared without instructions from a solicitor. Where the employment of counsel is sanctioned in cases in the United Kingdom, counsel is to be selected in the usual way by the solicitor who is acting.

Recent Decisions

In *R.* v. *Nowell*, on 19th April (*The Times*, 20th April), the Court of Criminal Appeal (the LORD CHIEF JUSTICE, and HUMPHREYS and PRITCHARD, JJ.) held that in a prosecution for driving a motor car while being under the influence of drink the evidence of a police doctor was admissible and should be accepted in the same way as that of any other professional man. The court added that the Scottish case of *Reed* v. *Nixon* (1948), 1 Sessions Notes 17, in which a conviction in a similar case had been quashed, the Lord Advocate conceding that in all such cases the police doctor was acting as " the hand of the police," did not represent the law of England.

In *Nairn Molvan* v. *A.-G.*, on 20th April (*The Times*, 21st April), the Judicial Committee of the Privy Council (LORD SIMONDS, LORD MORTON OF HENRYTON and Sir MADHAVAN NAIR) held that an order was valid when made by the District Court of Haifa confirming and ordering the forfeiture to the Palestine Government of a vessel, the owner of which was not a Palestinian citizen or resident or domiciled in Palestine, on the ground that 733 persons were on board within the territorial waters of Palestine in circumstances in which the owner was deemed to have abetted the unlawful immigration of those persons. Their lordships held that (1) the Immigration Ordinance was not contrary to the terms of the Mandate; (2) it was not contrary to any established principle of international law; (3) no state could claim protection for the ship in international law, and no principle of international law was broken by its seizure in Palestinian waters; (4) no principle of international law protected from the penalties of an ordinance persons of whatever nationality and wherever resident who abetted an offence against its laws.

In *Hibbert* v. *McKiernan*, on 22nd April (*The Times*, 23rd April), a Divisional Court (the LORD CHIEF JUSTICE, and HUMPHREYS and PRITCHARD, JJ.) held that justices had rightly convicted a defendant of stealing eight golf balls by picking them up on a golf links, because the defendant had taken them *animo furandi*; there was no licence by the club to all and sundry to go on to the links and take what they could find, and, in fact, the evidence showed that the club meant to exclude pilferers, and that conferred on them a special property in goods found on their land sufficient to support an indictment if the goods were taken, not under a claim of right, but with a felonious intent. Their lordships further held that, contrary to the opinion of the justices, the line of cases on the title to chattels found on the land of a person who was neither the finder nor the original owner (*Hannah* v. *Peel* [1945] K.B. 509) was not relevant to the consideration of the present case.

In *Boissevain* v. *Weil*, on 23rd April (p. 246 of this issue), CROOM-JOHNSON, J., held that where a British subject in Monaco during the war borrowed money from a foreigner, a Monegasque decree prohibiting foreign exchange transactions did not prohibit an undertaking to repay a debt in another country, that the transaction was not illegal at common law as constituting trading with the enemy, as it could not afford assistance to the enemy, and the Trading with the Enemy Act, 1939, was not applicable to the case, nor were regs. 2 and 3A of the Defence (Finance) Regulations, 1939, prohibiting transactions in currency, applicable, because the handing over of cheques by the defendant was not such a transaction.

TRUSTEES AND UNAUTHORISED INVESTMENTS

In these days of financial stress and reduced incomes trustees are frequently pressed by beneficiaries to commit breaches of trust by purchasing unauthorised investments. Those who wish to estimate the risk involved in complying with such requests will, of course, be advised that in normal cases the sole measure of liability for the breach of trust, if and when any claim is made, will be the replacement of the sum wrongly invested, together with interest thereon at 4 per cent. per annum from the date of investment (less any income derived from the investment and paid to the life tenant) (*Robinson* v. *Robinson* (1851), 1 De G. M. & G. 247; *Re Godwin's Settlement* (1918), 119 L.T. 643), and that time under the Limitation Act does not begin to run against a reversioner in respect of a claim by him until his interest falls into possession (Limitation Act, 1939, s. 19 (2)). As a corollary to the obligation of replacing the sum wrongly invested trustees have the right to take over the unauthorised investment, so that in practice their liability will amount to the difference between the sum so invested and the value of the investment at the time when the claim is made or proceedings are brought for breach of trust. The *cestuis que trust* have indeed the right to waive the breach and adopt the unauthorised investment, but in the case of settled funds this right can only be exercised by agreement of all the beneficiaries entitled in possession or reversion, and does not arise when some of them are minors or unascertained persons (cf. *Wright* v. *Morgan* [1926] A.C. 788).

In one special class of cases—i.e., where the trustees' power of investment is confined to one particular security only—the liability for an unauthorised investment may be heavier, for here the beneficiaries have the option to require the purchase of such an amount of the particular security as could have been purchased at the time of investment, in lieu of the mere replacement of the sum invested (*Shepherd* v. *Mouls* (1845), 4 Hare 500; *Robinson* v. *Robinson*, *supra*), an alternative which enables them to benefit from a rise in the price of such security. But the cases in which only one security is authorised for investment are naturally rare. The choice of investments available under the Trustee Act remains open even where in form there is a direction to invest in a particular security, unless this is accompanied by express words such as "only" or "and not otherwise," for without such words a mere direction of this kind is not sufficient evidence of an intention to exclude the powers of the Trustee Act (*Re Burke* [1908] 2 Ch. 248; *Re Warren* [1939] 1 Ch. 684). It may indeed be said that at the present time trustees always have some choice of investment, since the Government securities covered by the Finance Act, 1917, s. 35, and the National Loans Act, 1939, s. 4 (as extended by the National Loans Acts, 1940 to 1945, and the Miscellaneous Financial Provisions Act, 1946), may be purchased notwithstanding anything to the contrary in any trust instrument. These are, broadly speaking, the securities issued for the purpose of financing the last two wars. It is a matter of speculation whether the court would regard these Acts as removing the beneficiaries' option as to mode of assessing liability in cases where trustees would otherwise be effectively confined to investing in one security. Where the specified security is itself a British Government stock it seems on the whole likely that they would be allowed the benefit of a general rise in such Government stocks in estimating the trustees' liability for a wrongful investment.

The more cautious or conscientious trustee, when requested to make investments outside his powers, may refuse to comply unless the concurrence or indemnity of all possible beneficiaries can be obtained. Sometimes this is plainly impossible, as where the reversioners are minors, and in other cases various difficulties may arise. One of the more familiar occurs when the life tenant is a married woman whose interest is restrained from anticipation. It is common ground that such a beneficiary cannot charge her interest by way of indemnity to the trustees and that the court is reluctant to exercise its powers under s. 62 of the Trustee Act, 1925, to impound her interest for this purpose. But the suggestion is occasionally put forward that her consent to or request for an unauthorised investment may at least suffice as a defence to a later claim by the lady herself for the breach of trust. There may indeed be no reported decision in which the question of the concurrence of such a beneficiary in a breach of trust affording a bar to a later claim by herself has been considered in isolation from that of her liability to indemnify the trustees against the claims of other parties. On general principles, however, it seems that her concurrence can be no such bar, for "no act of hers unless according to the terms of the settlement could bind her," as it was put by Leach, M.R., in *Cocker* v. *Quayle* (1830), 1 Russ. & M. 535; and in *Lady Bateman* v. *Faber* [1898] 1 Ch. 144 it was emphasised by the Court of Appeal that the doctrine of estoppel cannot be applied so as to enable a married woman to deal with an interest subject to restraint on anticipation. A beneficiary subject to this restraint should therefore be treated as wholly incapable of effective consent to a breach of trust, though, of course, her personal indemnity may be of value if she has substantial free estate.

In cases where the life tenant has power to appoint to children or remoter issue, with a gift in default of appointment to children equally, and in other trusts of this type, it may be desired to close the class of persons entitled in reversion for the purpose of procuring the concurrence of all reversioners in a proposed unauthorised investment. If the class of persons entitled in default of appointment is already closed or can be considered so, and the members are *sui juris* and willing to concur, this object can, of course, be achieved by the life tenant releasing his power of appointment, thus eliminating other objects of the power—e.g., grandchildren—as possible beneficiaries, for the doctrine of fraud on powers has no application to such releases. Where, on the other hand, the class entitled in default of appointment is not definitely closed, it is at least doubtful whether the risk of claims by possible future members of the class can be avoided by the life tenant appointing to existing members and the trustees obtaining their concurrence. For the doctrine of fraud might, it seems, be applied to invalidate an appointment made for the purpose of procuring the appointees' concurrence in a breach of trust as being foreign to the power, particularly if it can be suggested that a benefit to the appointor as life tenant was to be anticipated from an increase in income. There are, it is true, a few cases in which appointments made by life tenants in realty settlements for the purpose of implementing dealings with land not within the powers of the settlement have been held good in particular circumstances—e.g., *Pickles* v. *Pickles* (1862), 31 L.J. Ch. 146, and *Re Huish's Charity* (1870), 10 Eq. 5. But these are not sufficiently *in pari materia* with an appointment for the purpose of providing sanction for the purchase of unauthorised investments to be held in a trust. It seems, therefore, that trustees could not rely on obtaining any more protection through this method than they would from a release of the power of appointment and an indemnity from present members of the class against the claims of possible future members.

For the beneficiaries' sanction to be binding they must have full knowledge of the nature of the transaction. In *Re Somerset* [1894] 1 Ch. 231 some distinction was drawn in the judgments of the Court of Appeal between knowledge that an investment is a breach of trust in law and knowledge of the facts which constitute the breach of trust, indicating that the latter is the degree of knowledge necessary to bind the beneficiary (see *per* Davey, L.J., at p. 274). But in this case the investment in question was an excessive advance on mortgage—i.e., an improper investment of an authorised class, and it seems that any such distinction would be academic in the case of an investment which is unauthorised *per se*, for here the fact which constitutes the breach of trust is simply that it is outside the legal powers of the trustees. This fact ought, therefore, to be plainly recited in any deed or document by which beneficiaries sanction an unauthorised investment.

H. B. W.

SOME CONVEYANCING POINTS UNDER THE TOWN AND COUNTRY PLANNING ACT, 1947—I

CERTAIN aspects of the Town and Country Planning Act, 1947, require the attention of conveyancers, many of whom are no doubt already trying to find out just what changes in conveyancing practice are likely to become accepted.

It is proposed to confine this article to an examination of one aspect of the problem, viz., what matters and things, from the point of view of town and country planning, can be discovered by an official search in the Land Registry or the Local Land Charges Registry or by inquiry of the local authority. The 1947 Act greatly extends the power of a local authority to issue orders controlling the use of land, and it is vitally important to know which restrictions may be discovered on searching and which not. The local land charges system has its value, but it has certain limitations which will be mentioned later. It is not possible fully to appreciate what other steps are requisite until one understands what is meant by "the usual searches" in connection with this subject.

Search in the Land Charges Register

A solicitor may find here, registered as a Class A land charge, an order made by the Central Land Board, charging the land with payment of a development charge for contravening development (s. 74 of the Town and Country Planning Act, 1947). In the normal case of authorised development a development charge has not to be registered. But the Central Land Board *may* require security by way of charge and this might be registrable under the normal rules, e.g., if it amounted to a puisne mortgage. There is one other matter which could be found registered here as a land charge Class D, although, in practice, it is nearly always registered as a local land charge. If a landowner enters into a voluntary agreement with a planning authority restricting the use of his land, such an agreement is enforceable as a restrictive covenant. Agreements like this were possible under s. 34 of the Town and Country Planning Act, 1932, and are possible to-day under s. 25 of the 1947 Act. The agreement is sufficiently registered if registered either as a land charge or a local land charge (s. 21 of the Land Charges Act, 1925).

Search in Local Land Charges Registry

The register is divided into parts. Part III is the register of town planning charges. It will contain matters already registered under the old Town Planning Acts, and it seems that most of the restrictions and prohibitions or charges which may arise under the 1947 Act will be registrable here or in Pt. IV of the register. On the other hand, a new part of the register may be added to deal with some or all of the matters in the 1947 Act. It is proposed to look at these new registrable matters under the 1947 Act after shortly explaining the significance of the entries in the existing parts of the register.

Part III.—This part relates to prohibitions of or restrictions on the user or mode of use of land or buildings which are planning charges. Some of the matters which may be registered here are largely of historical note. The following will be found here :—

(*a*) The past history of planning control in the area as disclosed by the entry showing the date when the area became subject to a "resolution to prepare a scheme" or to an operative "scheme." Some parts of old planning schemes may still be valid—see 1947 Act, Sched. X, para. 7.

(*b*) Prohibition orders under s. 5 of the Town and Country Planning (Interim Development) Act, 1943—these orders were made when the local authority caught someone carrying out development without permission.

(*c*) Orders for the interim protection of trees under s. 8 of the 1943 Act—these are perpetuated by Sched. X to the 1947 Act.

(*d*) Agreements under s. 34 of the 1932 Planning Act, which have already been mentioned—old agreements are preserved by para. 10 of Sched. X to the 1947 Act.

Part IV.—Prohibitions of or restrictions on user or transfer, which are not classed as planning charges, are registrable here. From a planning point of view the most important are things like building and improvement lines.

Part VI.—Here is the register of declaratory orders and compulsory purchase orders made under Pt. I of the Town and Country Planning Act, 1944. These declaratory orders are made in connection with areas of extensive war damage. No new declaratory orders can be made after 1st July, 1948.

Part VII.—Compulsory purchase orders and designation orders under the New Towns Act, 1946, are registered here, and affect a few parts of the country.

So much for the existing parts of the register. It is thought, however, that several matters under the 1947 Act will be registrable, although there is no specific provision in the Act itself. These are: (*a*) orders to secure the preservation of trees or woodlands (s. 28), or buildings of special architectural or historic interest (s. 29); (*b*) orders discontinuing a certain use of land or requiring the alteration of a building (s. 26); possibly (*c*) orders requiring proper maintenance of waste land (s. 33); and probably (*d*) enforcement notices under s. 23. The Act provides for the registration as a local land charge of any list prepared by the Minister of Town and Country Planning of buildings of special architectural or historic interest (s. 30), and any expenses incurred by a local authority in enforcing planning control may become registrable as a local land charge (s. 24 (5) (*d*)).

It should be emphasised at once that even if all the above matters become registrable, an inquiry should be addressed to the local authorities concerned and to the vendor as to whether any action has been taken or is contemplated under any of the sections just quoted. (Of course, the full inquiry need not be made in each case, e.g., an ordinary town house is not likely to be affected by a woodland or building preservation order under ss. 28 and 29.) Before a matter is sufficiently final to require registration, notices have usually to be served on owners and occupiers, and other steps taken, none of which attract a duty to carry out registration. Whether these preliminary steps have been taken, therefore, can *only* be found out by direct and specific inquiry of the local authorities concerned, and of the vendor. It is unfortunate that under present practice a local authority can answer such inquiries as a matter of grace and without guaranteeing the correctness of any reply. To give an example: an order under s. 26 of the 1947 Act may impose conditions on the continuance of an existing use of land, and will, presumably, therefore be registrable as a local land charge. The order, after being made by the planning authority, is not effective till confirmed by the Minister. Under present practice, therefore, it is not registrable till confirmed, and the local planning authority would not be liable for failing to inform a prospective purchaser that such an order had been made and submitted to the Minister, if inquiry was made to them on this point. It is suggested that there should be some system of provisional registration of such orders and prohibitions.

Two other matters require brief mention. The 1947 Act envisages that local authorities in preparing planning schemes will work out what land or buildings they are likely to require for their functions, and will designate them in the plan as subject to compulsory purchase. They are not *compelled* to do this, however. It seems probable, therefore, that the only way to avoid buying property which the local authority has its eye on, will be by being conversant with local affairs —although when it is prepared the development plan will have to be consulted, of course. Secondly, it is suggested that a search should be made of the register of applications to be kept by the planning authority (s. 14 (5)) to see what applications for planning permission have been made, and with what result. In the normal case this search would be after contract, but if the land was required for development it should obviously be made before contract.

J. K. B.

Criminal Law and Practice

DRUNK IN CHARGE

IT is a platitude that a person may be in charge of an animal, a human being or a motor-car, without being physically adjacent. In the case of motor-cars, persons have been found guilty of the offence of being "in charge of" a motor vehicle while under the influence of drink, although a mile away from the vehicle. If, for example, a person is away from the vehicle looking for a garage for the night, he would still be in charge of the car.

The reason why no authority on the meaning of the words "in charge" is to be found in the text-books is because it must be left to the bench to determine the question on the evidence as one of fact. There can hardly be "rulings" on such a matter, for many factors may enter into it, the ownership of the car, the reason for being away from the car, the intention, if any, to return to it, and so on.

Practitioners occasionally come across this type of case but the best advocates often find it difficult to appreciate that the question is one of fact rather than of law. For example, in an appeal at West Riding Quarter Sessions, the appellant was in the act of leaving a wine lodge and was apparently drunk, as he was supported by another man. The police stated that but for their intervention he would have driven a motor-car away. It was argued on their behalf that a man was in charge of a car if he was responsible for it and was in reasonable proximity to it. For the appellant counsel argued that it was a revolutionary doctrine to say that a man who was inside a building could be held to be in charge of a car on the road. The appellant succeeded, and the chairman said that the appellant might well have come within the terms of the Act if the police had not interfered.

The lesson to be drawn from the case is that there is no doctrine about the matter at all. The fact that a man is inside a building, in our submission, does not necessarily prevent him from being in charge of a car. It is impossible to say, in the absence of a fuller report than that in the *Evening Standard* of 1st January, 1948, whether the chairman was right or wrong in his decision, but it is submitted that it is still possible to say that the question is one of fact.

BINDING OVER TO KEEP THE PEACE

Persons unversed in the mysteries of the law sometimes express their bewilderment to their lawyer friends at apparent contradictions in its administration. One which is well known but rarely well understood is the jurisdiction of justices of the peace to bind over persons in their own recognizances, even though they have not been found guilty of any crime.

A typical expression of the common man's surprise at this state of the law is to be found in an *Evening Standard* headline in its issue dated 27th January, 1948. The headline: "Man acquitted, is bound over" was above a short note of a case at the London Sessions on that day, during which a jury stopped a case and acquitted a person who had been charged with entering a house with intent maliciously to cause grievous bodily harm to a woman.

After the acquittal the deputy-chairman, Mr. Laurence Vine, bound him over for a year on condition that he did not write to or attempt to see the woman again. Mr. Vine said: "You are not guilty of this offence. I think you are a bit of a pest. I think that you worried this young woman unfairly."

This is a good example of the jurisdiction of justices to bind over where no offence has been committed, to which reference has previously been made in these columns. According to Dalton (c. 116) if the person bound over to find surety refuses to do so, justices have power "to cause them in the Queen's prisons to be kept safely" until they do so. All that is required of the justice is that he be "satisfied upon oath that the applicant is under such fear or has just cause to be so by reason of such threats and that he does not require it out of malice or vexation" (1 Hawk. c. 60, ss. 6, 7). *Lansbury* v. *Riley* [1914] 3 K.B. 229, where the history of the law is examined, decided that the justices must be satisfied by evidence, not necessarily the evidence of a threatened person, that conduct had taken place which was calculated to incite a breach of the peace or the commission of crime. The jurisdiction is both ancient and useful and even prosecutors in assault cases, whether or not there are cross-summonses, rarely complain of any injustice on finding themselves, emerging from the court where they preferred their complaint, bound over for twelve months to keep the peace.

S. M.

A Conveyancer's Diary

CONDITIONS AGAINST ALIENATION—I

A CORRESPONDENT has objected to the "Diary" which appeared under the heading "Sales of Rent-Restricted Premises" on the 3rd April on two grounds. I suggested there that in certain circumstances the vendor of controlled premises on a sale to a protected tenant should reserve a right of pre-emption in the conveyance. The first objection relates to the use of the expression "pre-emption" in this context, where the only right which is of practical assistance to such a vendor is an option strictly so called. Well, the Oxford English Dictionary defines pre-emption as "purchase by one person before an opportunity is offered to others; also the right to make such a purchase," and since I also mentioned the necessity of registration, I think it was clear enough that the right contemplated was an option of a special nature, for which pre-emption is the precise expression.

The second objection requires much more extensive consideration, since it charges me with omission to refer to *Re Cockerill* [1929] 2 Ch. 131, and other cognate cases. This decision deals with conditions against alienation fastened upon a devise and exemplifies the rule that such conditions are in general bad. A testator devised land to P, subject to a proviso that if within twenty years of the testator's death P should desire to sell the land he was to give the governors of a school the option of purchasing the land at a named price. It was held, following *Re Rosher* (1884), 26 Ch. D. 801, that the proviso constituted a condition in restraint of alienation, which was void for repugnancy and not binding on P.

The rule that conditions against alienation annexed to a devise are generally void for repugnancy is well known, but so far as I am aware the effect of such a condition contained in a conveyance has not been the subject of a decision in the courts, at least in modern times. It is, on the face of it, somewhat startling that limitations which will operate to defeat a prior estate and to shift it from one person to another are perfectly permissible, provided that the rules against remoteness are observed, but that a condition inserted in a conveyance, after full negotiation between the parties, whereby in certain circumstances an estate will similarly shift in consideration of a money payment, should be void. It is further a matter for surprise that this point has apparently never been taken in connection with an option. In *L.S.W.R. Co.* v. *Gomm* (1881), 20 Ch. D. 562, for example, where such an objection would have been immediately fatal to the plaintiff company's claim, it was never raised either in argument or in the judgments of the court; and yet Jessel, M.R. (who delivered what is now considered a classic judgment on the conditions relative to the validity of options) had only

a few years earlier had to consider the effect of conditions against alienation annexed to a devise in *Re Macleay* (1875), L.R. 20 Eq. 186. This is a negative consideration, but it is an indication that conditions of this type are not *ipso facto* to be regarded as void unless annexed to a devise.

The *locus classicus* on this rule is the decision in *Re Rosher, supra*, where the authorities from the time of Lord Coke onwards were examined by Pearson, J., but before proceeding to consider this decision it is useful to touch briefly on the opinions held by eminent conveyancers of the past on the effect of conditions in restraint of alienation. On the principle that a restraint is good if it does not take away all power of alienation, it was considered by Preston that a restraint imposed for a period not trenching on the rule against perpetuities is not invalid (see his note to Sheppard's Touchstone, 7th ed., p. 130). Butler appears to have been of the same opinion (see his note to Fearne on Contingent Remainders, 530). This is also the view taken by the learned editor of Jarman (7th ed., note on p. 1440), although, of course, for the purposes of a restraint annexed to a devise the decision in *Re Rosher, supra*, is at present binding authority. Such a consensus of opinion carries great weight, and all the more, in my opinion, in that it coincides with the general principles regarding the creation of future legal interests developed over the past three centuries.

All this, however, is of little practical importance, however interesting it may be from an academic view, unless the decision in *Re Rosher, supra*, can be distinguished. The head-note states that a condition in absolute restraint of alienation annexed to a devise in fee, even though its operation is limited to a particular time, e.g., to the life of another living person, is void in law as being repugnant to the nature of an estate in fee. The facts were that a testator devised an estate to his son in fee, provided that if the son or his successors in title should desire to sell the estate during the lifetime of the testator's widow, the same should be offered to her at a price which was found to be one-fifth of the market value of the estate at the testator's death. Pearson, J., considered that the proviso amounted to an absolute restraint during the life of the testator's widow, and held it to be void in law. An analysis of the learned judge's reasons for this decision show clearly, in my opinion, that this case is authority only for the narrow proposition which it covers, and has no necessary application to the wider issue whether such restraints are *per se* void, whether annexed to a devise or contained in a conveyance.

The decision of Jessel, M.R., in *Re Macleay, supra*, was cited in argument on behalf of the testator's widow. In that decision it was stated (p. 189) that restrictions on alienation are possible in many ways, e.g., by restricting alienation to a particular time. Speaking of the restraint in that case, Jessel, M.R., used the following words: "There [this restraint] is not, strictly speaking, limited as to time, except in this way, that it is limited to the life of the first tenant in tail; of course, if unlimited as to time, it would be void for remoteness under another rule. So that this is strictly a limited restraint on alienation, and [unless early authorities are wrong] this is a good condition." And in the same judgment (p. 189) the learned Master of the Rolls stated that, according to the old books, the test in regard to conditions in restraint of alienation is "whether the condition takes away the whole power of alienation substantially: it is a question of substance, and not of mere form."

Pearson, J., found himself unable to agree that these wide propositions were well founded upon the earlier authorities, and in particular observed that both in Coke upon Littleton and in Sheppard's Touchstone there were many passages bearing upon conditions in restraint which are inconsistent with each other. After citing some passages by way of example, he went on: "The learned professors of the law are perpetually at loggerheads as to what is a good condition, and the reason is that they have departed from the first principle, that a condition *which is repugnant to a gift* is a void condition, and the exceptions have been made without any principle at all, and it is therefore perfectly impossible to say by any rule what exceptions are good and what are bad."

From this brief examination of the decision in *Re Rosher, supra*, the following conclusions may, I think, be drawn:—

(1) It is authority only on conditions annexed to a devise or a gift of land, since the *ratio decidendi* proceeds solely on that basis; the headnote to the report, in so far as it indicates a wider scope, is, in my opinion, not justified by the report.

(2) It is in conflict with *Re Macleay, supra*, a decision of equal authority, and in any case which is not, on the facts, precisely covered by one or other of these decisions, one is at liberty to distinguish either the one or the other.

(3) Since *Re Cockerill, supra*, professes to do no more than follow *Re Rosher*, the facts being similar, it adds no weight to the latter and does not in any way extend its scope.

The preliminary answer to my correspondent's objection, therefore, is that on the question of rights of pre-emption reserved on a sale of land, the line of cases he cites has no more than persuasive authority. A more extensive inquiry into the principles on which the validity of rights of this nature rest must wait until next week. "A B C"

Landlord and Tenant Notebook

DISAPPEARING TENANTS AND ESTOPPEL

In my article on "Sub-tenant or Lodger Surviving Tenant" [92 SOL. J. 229) I had occasion to refer to the recent decision in *Smith* v. *Mather* (1948), 92 SOL. J. 231, in which the landlords of a deceased and intestate contractual tenant of controlled premises owed their ultimate success to their having promptly served notice to quit on the President of the Probate, Divorce and Admiralty Division.

Practitioners, especially those who have sat as poor man's lawyers, will know how widespread is the belief that the death of a tenant, especially if no will is left, accelerates the reversion, no matter what the tenancy agreement says or omits to say on the subject. The learned President of the Probate, etc., Division (who discharges the functions once discharged by the Ordinary) is not troubled, and the landlord lets or purports to let to one of the family or to a stranger who never dreams of challenging title. Estoppel operates between the parties to the grant, and no one else turns up to disturb them. And this, it is well known, has often happened when the original tenant has not died but simply disappeared, an event which does not vest the tenancy in the President but does not destroy it either. For the Deserted Tenements Act, 1817, even if its existence be known, cannot give the landlord a clear title till more than six months has elapsed.

The problem of the disappearing tenant came before Denning, J., in the recent case of *Edward H. Lewis & Son, Ltd.* v. *Morelli and Another* (1948), 92 SOL. J. 220, in rather a novel form. The first defendant (who did not in fact defend the action) was the grantee of a twenty-one-year lease of combined restaurant and residential premises, which had commenced in 1926. The second defendant had been his resident manager. But in 1939 the first defendant, who was an Italian national, went to Italy and remained abroad till 1946, having acquired and lost the status of enemy alien in the meantime. During the period of that status the plaintiffs had let, or purported to let, the premises to the second defendant by a tenancy from week to week. When the twenty-one years of the lease to the first defendant came to an end in 1947, they wanted possession; but, the premises being within the Increase of Rent, etc., Acts, the second defendant claimed a statutory tenancy.

At the commencement of his judgment, in which he discussed a number of points, Denning, J., said that the real

question was whether the lease to the first defendant remained in existence when he became an enemy alien. This, in view of the conclusion finally reached, and the way in which it was reached, strikes one as, perhaps, a little misleading. The learned judge went on to hold that there had been no surrender by operation of law of that lease, as there was no consent to such surrender on the part of the lessee. Any contract that had existed between the two defendants had, however, been dissolved by the change of status, with the result that there was no agent who could perform the lessee's covenants on his behalf, and the landlords became entitled to forfeit the lease. They had done this by granting a tenancy to the second defendant, and that tenancy was a valid one.

If the judgment had stopped there, one's reflections might have been on these lines: it is true that the Law of Property Act, 1925, s. 146 (11), expressly saves, from the other provisions of that section providing for relief, the law relating to forfeiture for non-payment of rent; also that by the time the first defendant had reappeared it was too late for him to avail himself of the most generous provisions of the Common Law Procedure Acts even if he had the desire.

But what about the Courts (Emergency Powers) Act, 1939, s. 1 (2) (*a*) (iii), then in force? " . . . a person shall not be entitled, except with the leave of the appropriate court, to proceed to exercise any remedy which is available to him by way of re-entry upon any land " (see now s. 1 (2) (*a*) (iv) of the 1943 Act).

Denning, J.'s judgment suggests that the plaintiffs ought to have made an application for leave, making the Custodian of Enemy Property a party; but the fact that they had not was immaterial, for the plaintiffs were estopped from raising the point against the second defendant. The learned judge cited *Morton* v. *Woods* (1869), L.R. 3 Q.B. 658, and may well have selected this authority from the host of others illustrating " tenancy by estoppel " because of the succinct manner in which the position was stated by Blackburn, J.: " The principle is, that if it is agreed that one shall be the tenant to the other, both are estopped from disputing the other's title as landlord, and even though it be expressly stated that the landlord has no legal estate, still if they agree that the relation of landlord and tenant shall be created, and this agreement is carried out by the one being let into possession, as between them, the relation of landlord and tenant is created, and they are just as much estopped as if there had been no statement." This exposition covers not only such facts as those before the court in *Edward H. Lewis & Son, Ltd.* v. *Morelli*, but many other situations, including those brought about in such circumstances as are adverted to in my second paragraph. It may, however, be that the plaintiffs in the recent case sought to make something out of the fact that they had not actually let the second defendant into possession; if so, the next sentence in the judgment of Blackburn, J., in *Morton* v. *Woods* supplies the answer: " There was no letting into possession here [it was a case of attornment by a mortgagor in possession to his bankers, who had distrained], but there was what amounted to the same thing, a continued occupation, instead of a change of possession and a letting into possession again."

Estoppel is essentially a rule of evidence, and it seems, indeed, difficult to see how the plaintiffs, having accepted rent from the second defendant for some years, could succeed in the action by establishing that they had no power to let him the premises. What would have happened if the first defendant had taken an active part in the proceedings is a matter on which one can only speculate. He did, we are told, claim the lease when he returned to England in 1946. But, assuming (which has been doubted) that an enemy alien is entitled to the protection of the Courts (Emergency Powers) Acts, the effect on his finances of establishing his position was, perhaps, problematical. These Acts, as was pointed out in *Bowmaker, Ltd.* v. *Tabor* [1941] 2 K.B. 1 (C.A.), do not, in terms, confer benefits on debtors, but rather they restrain creditors; but the court has the task of protecting the debtor even against himself, and no doubt the first defendant might have obtained some damages from the plaintiff and second defendant. Whether these would have offset eight years' arrears of rent seems, however, doubtful.

R. B.

Notes from the County Courts

SUB-TENANTS AND THE RENT ACTS: A NEW PROBLEM

A RECENT case in the Blackpool County Court raises the problem of the position of sub-tenants under the Rent Restrictions Acts in a new form. In *Universal Caterers (Blackpool), Ltd.* v. *Dooley* the facts may be briefly summarised as follows: in 1939 A granted to N a lease for seven years of certain premises. In 1945 N granted a sub-lease to L of the whole premises to expire a few days before the expiration of the headlease. The premises consisted of a building with three floors and basement, the basement and ground floor being business premises, and the two upper floors being capable of use either for business or residential purposes. Neither lease nor sub-lease contained any prohibition against residential user. The aggregate rateable value of the building placed the premises as a whole outside the scope of the Rent Acts. During the currency of the sub-lease L verbally granted a weekly tenancy to the defendant of certain rooms upon the second floor. It was not in dispute in the case that these rooms were let to the defendant " as a separate dwelling," nor that the rateable value of the rooms was below £75. The contractual tenancy was determined by a valid notice to quit shortly before the expiration of L's sub-lease. After the expiration of the lease to N the freehold of the whole premises was conveyed by A to the plaintiffs. The plaintiffs now sued to recover possession and the defendant claimed to hold over under the protection of the Acts.

Section 15 (3) of the Act of 1920 is in these terms: " Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued."

The question which the present facts raise upon the construction of this subsection seems to be one so likely to arise in practice that it is curious to find no reported decision which provides an authoritative answer to it. Such, however, appears to be the position. To quote the learned county court judge: " In the judgments of Morton and Tucker, L.JJ., in *Wright* v. *Arnold* [1946] 2 All E.R. 616, it is said that s. 15 (3) of the Act of 1920 does not apply in a case in which a tenant of premises which are not within the Acts sub-lets part of those premises. Mr. Bailey submitted that those passages in those judgments were *obiter dicta*. He pointed out that the order of the court was in favour of the sub-tenant and was based, as appeared in each of the judgments, solely on the fact that the superior landlord had not in that case discharged the burden, imposed on him by s. 7 (1) of the Act of 1938, of proving that the premises let to the tenant were not premises to which the Acts applied. I am prepared to accept Mr. Bailey's submission in that respect and the position that I am bound to make up my own mind as to the meaning of s. 15 (3)."

The argument advanced for the defendant was that the premises comprised in the sub-letting to the defendant in themselves constituted premises within the definition of a " dwelling-house to which this Act applies "; that the defendant's immediate landlord, the sub-lessee L, though a tenant of the whole premises was equally a tenant of that part of the premises let to the defendant; that, therefore, on the determination of L's interest the defendant was entitled to the protection of s. 15 (3).

" It is true, of course," said the learned judge, " that when the interest of the tenant in the entirety of the premises let to him has determined, his interest in each part of those premises has also determined. But that is not, in my judgment, the way in

which the subsection ought to be construed. When one considers whether the event which brings the subsection into operation, namely, the determination of the interest of a tenant of a dwelling-house to which the Acts apply, has happened, one must consider the whole of the premises which had been let to the tenant and ascertain the rateable value of that whole. That, to my mind, is made quite clear by the use of the words 'any sub-tenant to whom the premises, or any part thereof, have been lawfully sub-let.' On Mr. Bailey's argument I can find no explanation for the use of the words 'or any part thereof.'"

The judgment proceeds to deal at length with the further argument put forward that the defendant could bring himself within the protection of the Acts independently of s. 15 (3). Here it must suffice to say that the learned county court judge found in the somewhat tortuous path which the defendant had of necessity to follow in order to establish that proposition a number of insuperable obstacles. In the result, therefore, the defendant's claim to the protection of the Acts failed, and on common law principles the plaintiffs recovered possession.

To say that this result is a startling one is by no means to imply any criticism of the methods of construction by which it is reached. The drafting of the Rent Acts as a whole has been subjected to much judicial criticism, and if the courts have on occasions been driven to abandon strict canons of construction, they have plainly done so only in an attempt to plug the blatant gaps left in the fabric of the structure which the Legislature intended to build. The construction which the courts ultimately put upon s. 12 (3) of the Act of 1920, which deals with apportionment and which presents a difficulty closely analogous to that raised by s. 15 (3), gave a wider meaning to the words of the section than they could in strictness be said to bear (see *Barrett* v. *Hardy* [1925] 2 K.B. 220). But the Court of Appeal took this decision with reluctance, following earlier authorities, and the view was expressed that it might have been better in the first instance had the anomalies which would undoubtedly result from any other construction been left to be settled by amending legislation.

Without expressing any opinion as to how they should properly be resolved, it may be said that the anomalies resulting from a strict construction of s. 15 (3) are formidable. If the "landlord" of a block of flats, the tenant of each one of which is protected, happens to be a mere leaseholder, when the property reverts to the freeholder are the tenants forthwith to be liable to eviction? Again, there seems to be no reason to make any distinction in principle in this respect between a tenancy comprising a single building and one comprising an area of land covered with a number of buildings. Thus it would appear that even the occupier, for example, of a small house on a "housing estate," holding of a mesne landlord whose interest extends to the whole estate, cannot regard himself as secure under the Acts.

N. C. B.

TO-DAY AND YESTERDAY

LOOKING BACK

An interesting and curious episode in the early life of Thomas More was the Evil May Day of 1517. He was at the time Under-Sheriff of London, the permanent legal official who advised the Sheriff. Popular feeling against the foreigners settled in England seemed ready to burst into flame and the authorities took alarm. On 30th April a Government order was transmitted to the City Fathers that every man should keep himself and his apprentices indoors from 9.0 that night till 7.0 next morning. Trouble started when an alderman tried to arrest one of a group of young men found playing in the street. A fight started and the alderman fled and was in great danger. Ugly mobs collected and started breaking open the prisons. At one point More encountered them and his eloquence "had almost brought them to a stay" when there was some stone-throwing. A sergeant-at-arms was hit and lost his temper and the crowd, out of control again, swept on. There was a good deal of looting but no fatal casualties and all was quiet by 3 a.m. By 5 a.m. the mayor, backed by the gentlemen of the Inns of Court and by divers noblemen, was in a position to assure order and arrest the dispersed rioters. Three days later the military, under the Duke of Norfolk, occupied the City. Thirteen persons implicated were summarily tried and executed for treason in violating the King's amity with foreign nations. It was only with difficulty that deputations to Henry and to Cardinal Wolsey, in which More was a prominent figure, obtained a general pardon for the remaining prisoners. The old play of *Sir Thomas More*, attributed by some to Shakespeare, opens with the scene of More reasoning with the rioters.

VIOLENCE IN THE DOCK

At the Liverpool Assizes recently a man condemned to four years' penal servitude for burglary was leaving the dock when he struck a violent blow at one of the prosecution witnesses sitting nearby. Mr. Justice Stable thereupon called him back and added another three years to his sentence. A very slight knowledge of legal history would have been sufficient to warn the burglar of the possibility. He might have remembered the Dublin prisoner whom Lord Chief Justice Norbury condemned to be flogged from the Bank to the Quay. "Thank you, my lord; you have done your worst," he interjected. "No," resumed the judge, "and back again." Two years ago there was a scene of violence at the Old Bailey when a young gangster received a sentence of seven years' penal servitude. With him in the dock was an associate whom he suspected of having given evidence to the police. After sentence he suddenly turned round and struck this man a heavy blow in the face, sending him reeling across the dock. He had to be overpowered by prison officers and taken below. Only a short time ago the fourteen-year old "boss" of a gang of London boys did much the same thing at Tower Bridge Juvenile Court. One of his young henchmen whom he had beaten and injured had given evidence against him when the "boss" made a rush forward shouting "I'll bash you! I'll murder you!" He had to be carried from the room screaming and kicking.

AN EPIC FIGHT

Of course, the epic example of a fight for vengeance in court is the Milsom and Fowler incident in 1896. They were a couple of brutes who had battered an old man to death and then disappeared. Fowler for some time escaped detection by starring in a circus as "Ajax, the Strong Man," but eventually they were caught and Milsom made a statement which proved exceedingly helpful to the police. In the dock, separated by a burly policeman, they presented a striking contrast: Fowler, enormously powerful and sturdy, Milsom, the typical sneak-thief, shifty and sly. Mr. Justice Hawkins was at the Old Bailey for the trial. His summing up passed off without incident. Then the jury retired and he left the court. Immediately Fowler flung himself bodily at his treacherous confederate but the warder deflected his rush so that he barely touched his enemy, who was hustled out of the way into the cells below, while police reinforcements went to the rescue of their comrade. Foul oaths from the prisoner, screams from the spectators, the sound of breaking glass and splintered woodwork filled the air, while the desperate man flung the warders from him like dummies. The end came when a particularly enormous warder literally fell on him and bore him down by sheer weight and mass. When judge and jury returned, Fowler stood manacled with his clothes in tatters. Afterwards his one fear was that Milsom might be reprieved, but they were hanged together, and when he saw him on the drop his smile of satisfaction never left his face while he lived.

BOOKS RECEIVED

Czechoslovakia between East and West. The Library of World Affairs, No. 7. By William Diamond. 1947. pp. xii and (with Index) 258. London: Stevens & Sons, Ltd. 12s. 6d. net.

In the Eyes of the Law. By G. Evelyn Miles, B.A., B.Sc., of Lincoln's Inn, Barrister-at-Law, and D. Knight Dix, B.A., of the Inner Temple and South-Eastern Circuit, Barrister-at-Law. 1948. pp. (with Index) 205. London: Edward Arnold & Co. 4s. net.

The Town and Country Planning Act, 1947. By Archibald Safford, K.C., of the Middle Temple and the South-Eastern Circuit, Barrister-at-Law, and Desmond Neligan, of the Middle Temple and the South-Eastern Circuit, Barrister-at-Law. 1948. pp. (with Index) 339. London: Hadden, Best and Co., Ltd. 30s. net.

Partners and the Law. "This is the Law" series. By P. Elman, M.A., of the Middle Temple, Barrister-at-Law. 1948. pp. vii and (with Index) 84. London: Stevens & Sons, Ltd. 4s. net.

Burke's Loose-Leaf War Legislation. Edited by H. Parrish, Barrister-at-Law. 1947–48 Vol., Pts. 3 and 4. London: Hamish Hamilton (Law Books), Ltd.

Company Law. By J. Charlesworth, LL.D. Supplement to Fourth Edition. 1948. pp. (with Index) 28. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. 2s. 6d. net.

REVIEWS

Chitty's Forms of Civil Proceedings in the King's Bench Division. Seventeenth edition. By PERCY J. BOWIE, O.B.E., late of the Central Office of the Supreme Court. 1947. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 75s. net.

The familiar design of this famous work is unchanged. On the flyleaf the object is quoted from the preface to the 1853 edition: "To lay before the profession a complete collection of Forms of Process and Proceedings in the Superior Courts of Law, since the Common Law Procedure Act came into operation." The present edition lives up admirably to this aim. Many new forms have been added, and among the new subjects introduced are the Prerogative Orders, and Cases Stated by magistrates and by quarter sessions. References to the numbers of those forms which are officially on sale add to the book's utility. Another valuable feature, though not a new one, is the printing verbatim in footnotes of substantially all the relevant Rules of the Supreme Court, with the author's and editors' notes of decided cases. The use of a second volume when dictating a form is thus in many cases obviated.

The test of a work like Chitty is in the using, and the value of this edition in ordinary practice may be demonstrated by the observation that in the period of a week or two during which it has graced the reviewer's desk it has been referred to several times already and never without yielding a note or a precedent of immediate practical assistance. The scope of the book is vast but its detail is so expertly arranged that this is no hindrance to the practitioner in his search for an unfamiliar form, or for a hint on the adaptation of an old one to new circumstances.

It is perhaps a pity that no note appears of the effect of the Crown Proceedings Act or of the Exchange Control Act but it would be churlish to wish that publication had been delayed for their inclusion. No doubt an early supplement dealing with these matters will be issued. A more substantial complaint concerns the index. A practitioner in a hurry needs an index which is alphabetically arranged throughout. The present one is certainly thorough, but is not suitably laid out for a work of reference.

Oyez Practice Notes, No. 4: Execution of a Judgment. By J. F. JOSLING, Solicitor of the Supreme Court. 1948. London: The Solicitors' Law Stationery Society, Ltd. 3s. 6d. net.

Although the "Annual Practice" and the "County Court Practice" contain detailed information on the subject of enforcement of judgments, a good deal of time can be saved by a preliminary reference to this booklet. A useful table shows at a glance the appropriate means of reaching particular types of assets in order to enforce a judgment, and the scope of the several common-law writs is then examined in such a way as will serve to remind the practitioner of the choice of execution available and provide his clerk with a guide to the appropriate procedure. Kindred subjects such as bankruptcy notices and equitable execution are also noticed. The necessity for compression no doubt accounts for the erroneous implication on p. 48 that leave must be obtained before a judgment summons can be issued on a county court judgment over two years' old, while on p. 22 the reference to Ord. 25, r. 7, of the County Court Rules should be deleted, as it was revoked in 1938. These, however, are minor matters that do not detract from the general purpose of the booklet, which may be confidently recommended to the busy practitioner.

The Register of Registrars, 1947. Edited by M. E. DAY and H. TARRY. 1948. London: Day's Publications and Services, Ltd. 35s. net.

The *Register of Registrars* is a new reference book designed to assist those who have to lodge transfer deeds, probates, letters of administration and other documents for registration. It consists of an alphabetical list of 10,000 securities, against each of which are shown the details essential for the registration of documents relating to share or stock holdings. The address of the transfer office, the fees for various documents and the forms to be used are included. The *Register* also contains some notes on recent legislation affecting share transfers, a geographical directory of stockbrokers in the United Kingdom, and a list of 400 professional registrars with the companies they represent. It should be a great help in speeding up the formalities attached to the preparation and presentation of documents for registration.

NOTES OF CASES

COURT OF APPEAL

ARBITRATION: EVIDENCE WRONGLY ADMITTED

Owen *v.* Nicholl

Tucker, Somervell and Cohen, L.JJ.

19th March, 1948

Appeal from Brentford County Court.

The plaintiff claimed £75 from the defendant in respect of a deposit paid for a consideration which had wholly failed. The parties obtained a consent order referring the claim to arbitration by the registrar under s. 89 of the County Courts Act, 1934. The sole issue in the proceedings was whether the defendant was in partnership with his son. After the arbitration the defendant applied, under s. 89 (3) of the Act of 1934, to the county court judge to set aside the award on the ground that the registrar had wrongfully admitted as evidence in the arbitration the file of the proceedings in bankruptcy of the defendant's son, including the son's evidence at his examination. The judge, on hearing that complaint, adjourned the matter for a few days. On the parties' attending with their witnesses on the named day, the judge stated that the notes taken at the son's examination had not been produced before the registrar at the arbitration, that the registrar's questions to the defendant were put from his recollection of what had taken place at the examination, and that the application to set aside the award failed. The defendant appealed.

TUCKER, L.J.—SOMERVELL and COHEN, L.JJ., agreeing—said that it would be misconduct within the technical meaning of that word as used in connection with arbitrations for the arbitrator to introduce into the proceedings evidence other than that adduced by the parties. To put in evidence, or make use of, the bankruptcy file relating to the defendant's son would be to introduce evidence not so adduced. Further, that evidence could not be evidence against the defendant. There would be the same objections if the arbitrator brought about the same result without actually consulting the file but by making use of his knowledge of the contents of that file in the course of proceedings between parties who had not been concerned in the bankruptcy. What had transpired before the registrar was sufficient to require that his award should be set aside. A person in the position of a judge should be careful to avoid making use of the knowledge of the kind in question which he had acquired in a different capacity. Finally, when a controversy arose making it necessary for the county court judge to consult the registrar as to what had taken place, it was desirable that the judge should inform the parties of what he had ascertained from the registrar before he (the judge) gave his decision on the application to set aside the award. Appeal allowed.

APPEARANCES: *Ashe Lincoln*, K.C., and *Stirling Boyd* (*Alwyn Williams & Co.*); *Mattar* (*Amery-Parkes & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DISTRICT AUDITOR: LIMIT OF SURCHARGING POWERS

Dickson *v.* Hurle-Hobbs

Scott, Bucknill and Asquith, L.JJ. 24th March, 1948

Appeal from the Divisional Court (63 T.L.R. 341).

London County Council entered into a contract with a company of motor repairers for the repair of vehicles. It was discovered that the company had sent in to the council accounts based on overstatement of the time spent on the work, and the managing director of the company was convicted of obtaining money by fraud. The district auditor, having estimated the loss suffered by the council through fraudulently exaggerated invoices from the company, proceeded to surcharge the managing director with the amount of the loss. The Divisional Court allowed the appeal by the managing director under s. 229 (1) of the Local Government Act, 1933, and the district auditor now appealed. By s. 228 of the Local Government Act, 1933, "It shall be the duty of the district auditor" [of a local authority] "at every audit held by him . . . (*d*) to surcharge the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred . . ." (*Cur. adv. vult.*)

ASQUITH, L.J., reading the judgment of the court, said that the class of persons made surchargeable by s. 228 (1) did not extend beyond members or officers of a local authority. There was accordingly no power in the district auditor to surcharge the managing director. Parliament could not have intended, by the mere omission of the word "accounting" (present in

s. 247 (7) of the Public Health Act, 1875) after "person," to introduce so startling a change in the law. Paragraph (*d*) of s. 228 (1) merely extended the class of transaction which might attract a surcharge. Appeal dismissed.

APPEARANCES: *Pritt*, K.C., and *Harold Williams*, K.C. (*Sharpe, Pritchard & Co.*); *Scott Henderson*, K.C., and *Garland* (*Alfred C. Warwick & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.

CHANCERY DIVISION

ADMINISTRATION ACTION: PAYMENT OUT OF COURT TO CREDITORS

***In re* Viscount Rothermere, deceased; Mellors Basden & Co. *v.* Coutts & Co.**

Wynn Parry, J. 8th March, 1948

Chambers summons.

An order in the usual form for the administration of the estate of the deceased was made at the instance of a creditor in 1941. The major part of the estate was realised, and the proceeds lodged in court. It was doubtful whether the estate would suffice to pay the debts. The master made his certificate in November, 1947, limited to ascertaining the amounts due to creditors and for funeral expenses. In view of the delay which would probably occur if distribution was deferred until the estate was fully realised, a creditor took out a summons for immediate payment of an interim dividend of 17s. 6d. in the pound to creditors ascertained by the certificate. This was adjourned to the judge in chambers.

WYNN PARRY, J., said that the question for consideration was whether there was jurisdiction to deal with the application in chambers. It appeared from *In re Terry* [1929] 2 Ch. 413 that the court had no more power to make the order on an adjourned summons in court than it would have had if the summons had remained in chambers, and *a fortiori* the converse was true. That case also showed that the primary practice was to order payment out only on the hearing of an action or on a petition, unless there was something in the rules to authorise the making of an order otherwise. Normally an administration action concerning an insolvent estate terminated by an order in chambers on further consideration (Ord. 55, r. 2, sub-r. (16)). In the present case such an order could not be made, as the master had not made a general certificate answering all the accounts and inquiries directed by the order, so an order for payment out could only be obtained on petition, unless process by summons was permissible (*Van Kamp* v. *Bell* (1818), 3 Madd. 430; Daniell, vol. I, pp. 1000, 1001). Where the fund exceeded £1,000 process by summons was permissible if there had been a judgment or order declaring the rights of the parties (Ord. 55, r. 2, sub-r. (1)). The question was whether the order for administration taken in conjunction with the certificate constituted such an order. A declaration of right was not necessarily contained in a single document (*In re Brandram* (1884), 25 Ch. D. 366). It was stated (without quoted authority) in the "Annual Practice," 1946–47, at p. 1136, that a master's certificate in answer to an inquiry, when binding, was equivalent to an order declaring rights. "Equivalent" was not an apt word, and the statement might not be right in all its implications, but in the present case he was entitled to treat the order for administration, together with the certificate, as an order within the sub-rule declaring the creditors as parties entitled to share the funds in court. He would therefore make an order for payment of an interim dividend. The costs of the defendant executors would be taxed as between solicitor and client; the costs of the plaintiff creditors would be taxed as between solicitor and client and also as between party and party, and would be paid as between party and party, with liberty to apply for payment of the difference should the estate prove to be insolvent.

APPEARANCES: *Wilfrid M. Hunt* (*Roney & Co.*); *Winterbotham* (*Radcliffes & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law, from a note prepared by Master MOSSE, with the leave of the learned JUDGE.]

LEASE: FORFEITURE: BREACH INCAPABLE OF REMEDY

Hoffman *v.* Fineberg

Harman, J. 9th March, 1948

Action.

In 1923 a lease was granted of certain premises for use as a club, which included a covenant "not to . . . do or suffer to be done any act or thing which may be . . . to the damage of the landlord but may use . . . the premises . . . for the ordinary purpose of . . . a club . . . such club being carried on in a proper and orderly manner and complying with all legal . . . regulations." In February, 1947, the club was raided by the police; the manager and others were charged under the Betting Act, 1853, and substantial fines were inflicted. In March, 1947, the landlord's solicitors served a notice under s. 146 (1) of the Law of Property Act, 1925, alleging the conviction and that the club had been carried on in breach of the covenant; it did not require the lessee to remedy the breach or demand compensation in money. The landlord brought an action for possession; the tenant relied on s. 146 (1) of the Act and counter-claimed for relief under s. 146 (2).

HARMAN, J., said that the facts clearly indicated a breach, as the tenants had not complied with the legal regulations and had permitted things to be done which might be a damage to the landlord. The terms of the relevant section of the Act and of its predecessor were explained in *Horsey Estate, Ltd.* v. *Steiger* [1899] 2 Q.B. 79, at p. 91. Failure to demand compensation in money did not invalidate the notice (*Lock* v. *Pearce* [1893] 2 Ch. 271). Failure to require the breach to be remedied would be fatal if the breach were so capable. In *Rugby School* v. *Tannahill* [1935] 1 K.B. 87 it was held that using the premises as a house of ill-fame was a breach incapable of remedy, but the Court of Appeal rejected the view of MacKinnon, J. ([1934] 1 K.B. 695, at p. 700), that the breach of any negative covenant was incapable of remedy. A similar case was *Egerton* v. *Esplanade Hotels, Ltd.* [1947] 2 All E.R. 88. There was a substantial difference of degree of moral obliquity between keeping a gambling-house and keeping a house of ill-fame, but the former was nevertheless a criminal offence. There probably had been no substantial damage to the landlord, but on the facts he was entitled to be protected against the slur of being said to be the landlord of a gaming-house. By ceasing to permit gambling the lessee could not wipe the slate clean. There was no remedy within the intendment of the statute for this particular breach, and the notice was good. Relief against forfeiture under s. 146 (2) was discretionary (see *Hyman* v. *Rose* [1912] A.C. 623). In the present case there had been a long continuance of the breach, and there was no ground for the court to interfere. There would be judgment for the plaintiff on the claim and counter-claim, with costs.

APPEARANCES: *Ungoed-Thomas*, K.C. (*Stone & Stone*); *M. Berkeley* (*Alexander Fine, Hawkins & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

WILL: "ALL MY STOCKS AND SHARES"

***In re* Purnchard's Will Trusts; Public Trustee *v.* Pelly**

Jenkins, J. 7th April, 1948

Adjourned summons.

The testator, who died in 1932, by his will (a holograph) made in December, 1926, provided as follows: "I devise and bequeath all my possessions whatsoever and wherever to my dear wife . . . during her lifetime, and at my dear wife's death I transfer and give to my brother-in-law my freehold residence . . . and all the contents therein contained and also my leasehold dwelling house . . . and further I devise and bequeath all my stocks and shares to the Royal Sussex County Hospital . . . for their benefit and use." The brother-in-law died during the testator's lifetime, and the widow died in 1945. At the testator's death his estate comprised, in addition to the freehold and leasehold properties, a sum of cash, and a number of Stock Exchange securities, including preference and ordinary stock and shares in trading companies, debenture stock and ordinary and preference shares in electricity supply companies, preference and ordinary stock in railway companies, mortgage debenture stock in British trading companies, British Government and municipal and dominion government stock, and foreign government and municipal bonds and loans. The summons was taken out to decide which of these securities should pass to the hospital; the treasurer of the hospital and representatives of the next of kin were defendants. It was contended for the next of kin that, on the authority of *In re Everett* [1944] Ch. 176, the expression "stocks and shares" must be limited to ordinary and preference stocks and shares in incorporated companies.

JENKINS, J., said that in the absence of a residuary gift any investments not passing to the hospital would devolve on an intestacy. Regard should be had to the nature of the assets at the testator's death; these consisted of the house properties mentioned, some cash, and the investments. It was right to infer that the testator, having given to his wife a life interest in his whole estate, intended to dispose of such whole estate after her death, and conceived that he had done so by means of the language used. He had overlooked the cash, but might have assumed that this might be required to defray debts and expenses.

Apart from that, his belief was well founded unless the gift of "all my stocks and shares" was incapable of passing the whole of the investments. If the intention of a testator can be collected from the will as a whole, particular expressions must be construed so as to give effect to it if that can be done without doing violence to the language used. If the matter were free from authority, all the investments would pass, except possibly the foreign bonds and loans, which could not accurately be described as stocks or shares. However, it had been held in *In re Everett* [1944] Ch. 176, that the expression "stocks and shares" in the will in suit was confined to "stocks and shares in limited companies," a distinction being made between proprietary capital and funded indebtedness; to do this in the present case would defeat the testator's intentions to the very substantial extent represented by the debenture stocks, Government and municipal stocks, bonds and notes. *In re Everett* was not intended to lay down a general rule as to the meaning of the words in other wills different in form and circumstances. In the present case, the scheme and circumstances of the will called for the widest proper construction. In every day language, such as was used in the holograph will, it meant all forms of Stock Exchange investments, and this construction was supported by the use by Lord Romer of the words in this way in *Perrin* v. *Morgan* [1943] A.C. 399, at p. 421. Accordingly the whole of the investments passed to the hospital. Costs as between solicitor and client would come out of the estate.

APPEARANCES: *Hubert Rose* (*Rose, Johnson & Hicks*, for *A. C. Woolley & Bevis*, Brighton); *C. V. Rawlence* (*Burton and Ramsden*); *Raymond Walton* (*Farrer & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

MARKET OVERT: CAR BOUGHT IN MARKET

Bishopsgate Motor Finance Corporation *v.* Transport Brakes, Ltd.

Humphreys, J. 28th February, 1948

Action.

The plaintiffs let a car on hire-purchase. The hire-purchaser wrongfully sold the car to a garage proprietor, who bought it in good faith and without knowledge of the vendor's defective title, in the following circumstances. The car was put up for sale at a public auction at Maidstone public market. Such auction sales had been held in that market for many years. The reserve price not having been reached, the car was withdrawn from the sale. While the garage proprietor was looking at it in the market place, the hire-purchaser approached him. After some negotiation, a bargain was struck, and the garage proprietor paid for and took delivery of the car. It was market day, and articles of many kinds were habitually sold direct to members of the public at that market. The garage proprietor sold the car in due course to the defendant company, who brought him in as third party when this action was brought against them by the plaintiffs. (*Cur. adv. vult.*)

HUMPHREYS, J., said that a sale and purchase of the car at an auction sale would undoubtedly have been a sale in market overt, in accordance with the usage of the market. On the whole, the garage proprietor had established that the purchase of the car was in market overt and, therefore, protected by s. 22 of the Sale of Goods Act, 1893. He had bought the car in a long-established market where, to his knowledge, motor cars had for many years been sold publicly. He had paid a fair price, and there had been nothing about the transaction to arouse his suspicion. The mere fact that the sale was not effected at a public auction sale did not operate to remove it from the category of sales in market overt. The garage proprietor accordingly acquired and passed a good title to the car. Action dismissed.

APPEARANCES: *Gallop*, K.C., and *I. H. Jacob* (*M. & H. Shanson*); *Raymond Stock* (*Rider, Heaton, Meredith & Mills*, for *Osborne, Ward, Vassall & Abbot & Co.*, Bristol) (defendants); *B. Lewis* (*G. Houghton & Son*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SHIPPING: CLAIM FOR DEMURRAGE

Argonaut Navigation Company, Ltd. *v.* Minister of Food

Sellers, J. 23rd April, 1948

Action.

A steamship belonging to the plaintiff company was chartered to the defendant Minister to load a full and complete cargo of wheat. A certain period was allowed for loading, and if that period should be exceeded the charterer was to pay demurrage. A quantity of wheat was loaded in bulk on to the steamer, but, in order to make up a complete cargo, a further quantity when it arrived on board was put into bags. The time occupied in bagging caused delay beyond the time allowed for loading. The owners therefore claimed demurrage.

SELLERS, J., said that after cargo had been delivered to the ship by the charterer it was the duty of the shipowners to stow it on board. As the wheat here had to be bagged so that it could be carried, or for compliance with the port regulations, the bagging was part of the duty of the shipowners. Until the bagging was carried out, therefore, loading was not completed, but no claim for demurrage could arise. Judgment for the defendant.

APPEARANCES: *Mocatta* (*Stokes & Mitcalfe*); *E. W. Roskill* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DEBT INCURRED IN ENEMY-OCCUPIED TERRITORY: CREDITOR'S CLAIM

Boissevain *v.* Weil

Croom-Johnson, J. 23rd April, 1948

Action.

In 1944, the plaintiff, a Dutch subject, lent the defendant, a British subject, 320,000f. at Monaco, then in the military occupation of the enemy. The defendant gave the plaintiff as security three cheques drawn on a bank in England. The plaintiff now claimed £6,000 as repayment of the debt. (*Cur. adv. vult.*)

CROOM-JOHNSON, J., found that a French decree, prohibiting foreign exchange transactions, applied to Monaco by a Monegasque decree of 1941, did not prohibit an undertaking to repay a debt in another country, and said that the transactions were not, therefore, prohibited by Monegasque or French law. It was not argued that the transactions were illegal at common law as constituting trading with the enemy, *Ertel Bieber & Co.* v. *Rio Tinto Co., Ltd.* [1918] A.C. 861 being cited; but a contract was only illegal in so far as it afforded assistance to the enemy: *per* Lord Parker in *Daimler Co., Ltd.* v. *Continental Tyre & Rubber Co.* (*Great Britain*), *Ltd.* [1916] 2 A.C. 307, at p. 347. For a British subject to borrow money for vital necessities from one who was in effect a fellow prisoner in enemy territory was not trading with the enemy. He (his lordship) was in any event not satisfied that Monaco was entirely within enemy occupation at the time for the purpose of the common-law decisions. Next, by an Order in Council of August, 1940, Monaco was deemed to be enemy territory for the purpose of the Trading with the Enemy Act, 1939. That Act was aimed at preventing British subjects from making a contract with alien enemies or persons residing in enemy-occupied territory, but was not applicable in such a case as the present. Lastly, it had been argued for the defendant that she had committed an offence under the Defence (Finance) Regulations, 1939, and that accordingly the transactions were prohibited and unenforceable. Regulations 2 and 3A prohibited transactions in currency; but the handing over by the defendant of the three cheques was not such a transaction. Judgment for the plaintiff.

APPEARANCES: *Sir David Maxwell Fyfe*, K.C., and *B. M. Goodman* (*William Charles Crocker*); *Gardiner*, K.C., and *Stenham* (*Pettiver & Pearkes*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

OBITUARY

MR. C. ARNISON

Mr. Charles Arnison, solicitor, of Penrith, died on 17th April, aged seventy-four. He was admitted in 1897 and succeeded his father as Clerk to the West Westmorland Magistrates.

SIR WALTER BOYD, K.C.

Sir Walter Herbert Boyd, Bt., K.C., Chief Registrar of Bankruptcy in Ireland from 1912 to 1937, died in Dublin on 17th April, aged eighty-one. He was called to the Irish Bar in 1891 and took silk in 1918.

MRS. M. J. BRUNING

Mrs. Millicent Joan Bruning, of Messrs. Hayward & Co., solicitors, of Wolverhampton, was killed on 7th April when she fell from the sixth storey of a building in Wolverhampton. She was thirty-five years of age, and was admitted in 1933.

MR. H. F. CHIDLEY

The death has occurred in Dublin of Mr. Henry F. Chidley, B.A., at the age of eighty-two. He was admitted in 1891 and practised in Dublin until 1943.

MR. R. H. WHITWORTH

Mr. Robert Henry Whitworth, solicitor, of Newbury, died on 30th March, aged eighty-four. He was admitted in 1909.

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time :—
CRIMINAL JUSTICE BILL [H.C.] [16th April.
RAILWAY CLEARING SYSTEM SUPERANNUATION FUND BILL [H.C.] [22nd April.
UNIVERSITY OF SHEFFIELD (LANDS) BILL [H.C.] [22nd April.
Read Second Time :—
ARMY AND AIR FORCE (ANNUAL) BILL [H.C.] [20th April.
VETERINARY SURGEONS BILL [H.L.] [20th April.
Read Third Time :—
CHILDREN BILL [H.L.] [20th April.
PALESTINE BILL [H.C.] [22nd April.
In Committee :—
NATIONAL ASSISTANCE BILL [H.C.] [20th April.

HOUSE OF COMMONS

Read First Time :—
MOTOR SPIRIT (REGULATION) BILL [H.C.] [21st April.
To create certain offences in connection with the supply and use of motor spirit, and for purposes connected therewith.
Read Second Time :—
LAW REFORM (PERSONAL INJURIES) BILL [H.L.] [23rd April.
MONOPOLY (INQUIRY AND CONTROL) BILL [H.C.] [22nd April.
SMETHWICK CORPORATION BILL [H.C.] [19th April.
SOUTH SUBURBAN GAS BILL [H.L.] [20th April.
Read Third Time :—
SUPERANNUATION (MISCELLANEOUS PROVISIONS) BILL [H.C.] [23rd April.
In Committee :—
REPRESENTATION OF THE PEOPLE BILL [H.C.] [21st April.

QUESTIONS TO MINISTERS

JUVENILE COURTS (CONSTITUTION)

Mr. SKINNARD asked the Secretary of State for the Home Department whether, in the absence of a male colleague, it is competent under his regulations for two female magistrates to hold a juvenile court.

Mr. EDE: Rules made by the Lord Chancellor applying to juvenile courts outside the Metropolitan Magistrates Court Area do not permit this. In the Metropolitan Magistrates Court Area the statute provides that a juvenile court may in certain exceptional circumstances be constituted of two women. [22nd April.

AFFILIATION ORDERS (STATISTICS)

Lieut.-Colonel GEOFFREY CLIFTON-BROWN asked the Secretary of State for the Home Department if the practice of publishing the numbers of applications made in the courts for affiliation orders can now be recommenced and shown at the same time as the numbers of illegitimate births and orders granted.

Mr. EDE: The forthcoming volume of criminal statistics for the year 1946, like the volumes published before the war, will give the number of affiliation orders made by courts of summary jurisdiction. I will consider whether for future years information should also be included as to the number of applications for such orders. The number of illegitimate births is given in the annual Statistical Review prepared by the Registrar General. [22nd April.

CRIME (RESEARCH)

Mr. PETER FREEMAN asked the Secretary of State for the Home Department what are the terms of reference for the committee which he is setting up to inquire into the cause of crime; when it will meet; and what are the names of its members.

Mr. EDE: I am not proposing to set up a committee of inquiry on this subject, but I undertook, during Committee stage of the Criminal Justice Bill, to amend the Bill so as to take power to undertake research into the causes of delinquency and the treatment of offenders, and to make grants to approved bodies or persons engaged in such research. Amendments were made accordingly during Report stage and have been embodied in the Bill. [22nd April.

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 792. **Control of Rates of Hire** of Plant Order, 1948. April 16.
No. 777. **Exchange Control** (Payments) (Syria) Order, 1948. April 16.
No. 772. **Kenya** (Non-domiciled Parties) Divorce (Amendment) Rules, 1948. April 13.
No. 774. **Lloyd's and Other Approved Associations** (Auditors' Certificates) Regulations, 1948. April 14.
No. 773. Lloyd's and Other Approved Associations (Forms of Annual Statements) Regulations, 1948. April 14.
No. 776. **Miscellaneous Goods** (Maximum Prices) (Amendment) Order, 1948. April 16.
No. 810. **Railway and Canal Securities** (Conversion Date) (No. 4) Order, 1948. April 19.
No. 758. **Trustee Savings Banks** (Superannuation Value) Rules, 1948. April 14.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Professional Announcement

Messrs. E. G. Clark & Hallam, of 12 & 21 Sun Street, Lancaster, have, as from 1st April, 1948, taken into partnership Mr. George Edward Hallam. The name of the firm will remain unchanged.

Honours and Appointments

The King, on the recommendation of the Lord Chancellor, has approved the appointment of Mr. HILARY GWYNNE TALBOT to be deputy chairman of Northampton Quarter Sessions.

The Lord Chancellor has appointed Mr. CHARLES WADDINGTON to be the Registrar of the Burnley, Accrington, Colne and Nelson, Rawtenstall and Todmorden County Courts and District Registrar in the District Registry of the High Court of Justice in Burnley as from 6th March, 1948.

Notes

The Union Society of London will hold its annual Ladies' Night Debate in the Old Hall, Lincoln's Inn, on Wednesday, 5th May, at 8 p.m. The motion "That the drift to war can be stopped by changing the foreign policy of this country" will be proposed by Mr. K. Zilliacus, M.P., and opposed by Mr. Victor Raikes, M.P.

Admission will be by ticket only. Tickets (price 2s. 6d. each) may be obtained on application to Mr. W. G. Wingate, Hon. Treasurer, 2 Garden Court, Temple, E.C.4 (Central 4741), or Mr. R. G. Middleton, Hon. Secretary, 155 Fenchurch Street, E.C.3 (Mansion House 3953). Tickets will also be on sale at the door. Members and visitors should enter Lincoln's Inn by the Stone Buildings Gate, Chancery Lane.

THE SOLICITORS' LAW STATIONERY SOCIETY, LTD.

The report of the directors of The Solicitors' Law Stationery Society, Ltd., for the year 1947, states that the sales continued to increase, the total for the year being 21 per cent. higher than for the previous year and constituting a new record. As a result of the absorption of increased costs, the reintroduction of discount, and a close watch on prices, the profit for the year was lower by £12,453 and amounted to £83,689, and the directors recommend that a dividend of 15 per cent. per annum, less income tax, be paid in respect of the year. A bonus will be payable to the staff under the profit-sharing scheme. They also recommend the provision of £31,607 against estimated liability for income tax and profits tax, the addition of £10,000 to rebuilding reserve, £5,000 to general reserve, £2,500 to the provision for women's pensions, and the carrying forward of the sum of £20,506, against £16,387 brought forward from the previous year.

The annual meeting will be held at 88–90, Chancery Lane, W.C.2 (First Floor), on Tuesday, 4th May, at 12.30 o'clock. A report of the proceedings at the meeting will appear in our issue of the 8th May.

THE BARRISTERS' BENEVOLENT ASSOCIATION

The annual general meeting of the Barristers' Benevolent Association will be held in the Old Hall, Lincoln's Inn, on Thursday, 6th May, 1948, at 4.30 p.m. In order to save expense, no postcard reminder of the annual general meeting will be sent this year.

The Right Hon. LORD MORTON has kindly promised to preside. All members of the Inns of Court, whether subscribers to the Association's funds or not, are cordially invited to attend.

The Committee wish it to be known that the Association is urgently in need of further support. Members of the Bar who

do not already subscribe will, if they attend the meeting, learn of the valuable work of the Association in relieving cases of distress in the profession, and of its pressing need for augmented resources.

An opportunity will be afforded to members and others attending the meeting to raise for discussion any questions relating to the work or administration of the Association.

The annual report will be circulated, before the meeting, to every member of the Bar with an address in the Law List.

The following twenty members of the Association are eligible and willing to serve on the Committee of Management for the ensuing year as ordinary members thereof, and will be proposed for election at the meeting: Sir Walter Monckton, K.C.M.G., K.C.V.O., M.C., K.C., H. A. H. Christie, K.C., P. E. Sandlands, K.C., J. Neville Gray, K.C., Eric Sachs, K.C., E. Holroyd Pearce, K.C., S. E. Karminski, K.C., Michael E. Rowe, K.C., C. Montgomery White, K.C., E. A. Godson, M.C., Anthony Hawke, Richard Elwes, Sir John Cameron, Bt., The Hon. B. Bathurst, F. D. L. McIntyre, Geoffrey Cross, A. A. Baden Fuller, Martin Jukes, H. J. Phillimore and Patrick Back.

Subscriptions and donations should be sent to the Association at the above address. Cheques should be drawn in favour of "The Barristers' Benevolent Association or Order" and crossed "Westminster Bank, Ltd., a/c of Payees." A form of bankers' order will be enclosed with the report.

THE WORSHIPFUL COMPANY OF SOLICITORS

The Lord Mayor and the Sheriffs attended the Court dinner of the Worshipful Company of Solicitors of the City of London held on 19th April in Tallow Chandlers' Hall. The other guests of the Master and Wardens included: The Lord Chief Justice, the Vice-President of the Bar Council, the President and Vice-President of The Law Society, the Chairman of the Board of Inland Revenue, Alderman Sir Frank Newson Smith, the Remembrancer, the Hon. Sir Albert Napier, Sir John Anderson, Sir David Monteath, Sir George R. Warner, Sir Claude Liardet, Sir Clive Baillieu, Instructor Rear-Admiral Sir Arthur Hall, Sir Richard Fairey, Sir Eustace Pulbrook, Sir Douglas Garrett, Sir Clarence Sadd, Sir Wilfrid Nops, Sir Arthur E. Morgan, and Sir George Maddex.

GENERAL COUNCIL OF THE BAR ELECTION, 1948

Thirty-four nominations have been received to fill the twenty-four vacancies upon the Council. The election will take place from 3rd May to 17th May. Voting papers are being sent to every barrister on or about 30th April whose address within the United Kingdom is given in the 1947 Law List. A barrister who has not an address in the 1947 Law List may obtain a voting paper upon his *written or personal* application to the offices of the Council.

KING'S COUNSEL: Messrs. Hector S. J. Hughes, M.P., C. Paley Scott, Tristram de la Poer Beresford, J. P. Eddy, J. N. Gray, Eric Sachs, G. J. Paull, The Hon. E. E. S. Montagu, O.B.E., Messrs. B. E. Nield, M.P., A. L. Ungoed-Thomas, M.P., The Hon. C. R. Russell.

OUTER BAR: Messrs. R. E. Gething, E. M. Gorst, H. O. Danckwerts, W. Latey, M.B.E., E. A. Hawke, M. L. Gedge, B. A. Harwood, J. F. Bowyer, E. Garth Moore, L. F. Sturge, G. N. Black, G. R. Swanwick, J. A. Plowman, J. H. Bassett, R. J. A. Temple, Stephen H. Murray.

UNDER TEN YEARS' STANDING AT THE BAR: Messrs. W. P. Grieve, M. A. L. Cripps, J. R. Macgregor, W. R. Rees-Davies, G. V. Rogers, R. E. Megarry, D. C. Bain.

PRICES STANDSTILL ORDERS

The Board of Trade have made amended versions of the original prices standstill orders, the operation of which was postponed to allow time for discussions with industry. The new orders (S.I. 1948 Nos. 775, 776, 779, 780 and 781) operate from 3rd May. They are all made under the Goods and Services (Price Control) Act, 1941, as amended, and cover miscellaneous goods, general apparel, furnishings and textiles, domestic pottery, general hardware and ironmongery, and general hollow-ware.

Under the new orders the maximum price for goods not similar to any sold in the basic period will be the costs of production, plus 5 per cent. Applications for an increase in the 5 per cent. margin will be considered in particular cases, and similarly the margin may be reduced where a reduction appears to be appropriate.

Provision is made for quantity discounts and allowances, and for the adoption of an earlier basic period for seasonal goods which were not being sold in the 1948 period. Percentage increases on the prices in the basic period are being allowed to certain industries which have recently suffered heavy increases in the costs of their raw materials.

The schedule of goods has been amended in a number of instances by the inclusion or exclusion of particular types of goods; specific provision has been made for sole distributors, for delivery charges on small parcels and for cash discount to be compulsory only where it was allowed in the basic period; and distributors' margins have been adjusted where it has been shown that the margins normally taken in December, 1947, were other than those specified in the original orders.

PROVINCIAL LAW SOCIETIES

At the annual general meeting of the HULL INCORPORATED LAW SOCIETY, held on 22nd April, the following officers and members of the Council were appointed for the ensuing year: President—Colonel Edgar Laverack; Vice-President—Mr. Hugh Farrell, M.A., LL.B.; Honorary Secretary—Mr. D. P. Shackles; Honorary Treasurer—Colonel A. V. Rhodes.

The following gentlemen were elected as members of the Council: Messrs. E. H. J. Chambers, N. Dixon, E. B. Burstall, M. V. Gosschalk, H. E. Jackson, Dr. T. C. Jackson, Messrs. R. F. Payne, G. T. Rignall, N. W. Slack and H. D. Winter.

The retiring President, Mr. A. H. Wilkinson, is an *ex officio* member of the Council under the constitution of the Society.

Colonel Laverack is the third generation of his family to occupy the position of President of the Society.

The WAKEFIELD INCORPORATED LAW SOCIETY held its annual meeting on 19th April preceded by a luncheon at the Strafford Arms Hotel, Wakefield. Eighteen members were present, and Mr. C. J. Haworth, the Coroner for the Wakefield District of the West Riding of Yorkshire and the Honor of Pontefract, was a guest.

Mr. R. Sweeting, B.A., LL.B., was elected President for the ensuing year in succession to Mr. T. V. Way. Mr. G. V. H. Clayton-Smith was re-elected a Vice-President and Mr. J. L. J. Burton, LL.M., was elected a Vice-President in addition to being the Librarian. Mr. S. H. B. Gill and Mr. C. E. Coles, M.A., were re-elected Treasurer and Secretary respectively. There are now forty-two members of the Society.

COURT PAPERS

SUPREME COURT OF JUDICATURE

EASTER SITTINGS, 1948

COURT OF APPEAL AND HIGH COURT OF JUSTICE
CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON GROUP A

Date		Emergency Rota	Appeal Court I	Mr. Justice Vaisey	Mr. Justice Roxburgh
				Non-Witness	*Business as listed*
Mon., May	3	Mr. Reader	Mr. Andrews	Mr. Blaker	Mr. Jones
Tues., ,,	4	Hay	Jones	Andrews	Reader
Wed., ,,	5	Farr	Reader	Jones	Hay
Thur., ,,	6	Blaker	Hay	Reader	Farr
Fri., ,,	7	Andrews	Farr	Hay	Blaker
Sat., ,,	8	Jones	Blaker	Farr	Andrews

Date		Group A		Group B	
		Mr. Justice Wynn Parry	Mr. Justice Romer	Mr. Justice Jenkins	Mr. Justice Harman
		Witness	*Non-Witness*	*Business as listed*	*Witness*
Mon., May	3	Mr. Andrews	Mr. Hay	Mr. Farr	Mr. Reader
Tues., ,,	4	Jones	Farr	Blaker	Hay
Wed., ,,	5	Reader	Blaker	Andrews	Farr
Thur., ,,	6	Hay	Andrews	Jones	Blaker
Fri., ,,	7	Farr	Jones	Reader	Andrews
Sat. ,,	8	Blaker	Reader	Hay	Jones

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).